

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:22-cr-00016-MR-WCM**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
)	
SHAWN THOMAS JOHNSON,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on the Government’s Second Motion for Preliminary Order of Forfeiture for Specific Property (“Second Forfeiture Motion”) [Doc. 77].

The Defendant Shawn Thomas Johnson has pleaded guilty to one count of bank fraud, in violation of 18 U.S.C. § 1344. In April 2023, the Court entered an Order granting the Government a forfeiture money judgment in the amount of \$2,778,237.00, representing the “net proceeds of the Defendant’s bank fraud offense.” [Doc. 57 at 14].

Following the entry of the forfeiture money judgment, the Government filed a Motion for Preliminary Order of Forfeiture for Specific Property (“First Forfeiture Motion”). [Doc. 59]. In that Motion, the Government sought a

preliminary order of forfeiture of a number of assets in partial satisfaction of the forfeiture money judgment. One of the assets sought to be seized was the “net sale proceeds” from the foreclosure sale of 24 Apogee Drive in the amount of \$3,980.00. [Doc. 59 at 6]. The Court granted the Government’s First Forfeiture Motion and entered an Order allowing the seizure of the identified assets, including the \$3,980.00 in proceeds derived from the 24 Apogee Drive sale. [Doc. 69].

By the present motion, the Government requests forfeiture of approximately \$151,738.83 in funds that the Government contends that it identified and/or that became available subsequent to the filing of its First Forfeiture Motion. [Doc. 77]. Included in the assets identified in the Government’s Second Forfeiture Motion are the so-called “surplus proceeds” of the foreclosure sale of 24 Apogee Drive in the amount of \$90,034.03.¹ [Id. at 4-5]. The Government’s Second Forfeiture Motion does not explain, however, what is meant by the term “surplus proceeds” or how these proceeds relate to the \$3,980.00 in proceeds already seized.

¹ In support of its request, the Government submits a document that purports to be a notarized affidavit but which does not actually identify the affiant by name, instead merely referring to the affiant as “Attorney at Law for Substitute Trustee Services, Inc.” [Doc. 77-1].

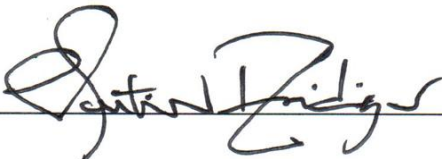
Accordingly, the Court will give the parties the opportunity to file supplemental briefing to address the foreclosure sale of 24 Apogee Drive and to identify the proper amount of proceeds derived from that sale that are subject to forfeiture, as well as how this foreclosure operated to render any such proceeds for seizure.

In addition, the parties shall provide to the Court a calculation of what they believe the balance of the Defendant's forfeiture money judgment to be after the application of all preliminary forfeitures the Government has sought to date, and how they arrived upon such amount.

IT IS, THEREFORE, ORDERED that, within seven (7) days of the entry of this Order, the Government shall file a supplemental brief generally addressing the foreclosure sale of 24 Apogee Drive, particularly identifying the proper amount of proceeds derived from that sale, and providing a calculation of the balance of the Defendant's forfeiture money judgment to date. The Defendant may file a response to the Government's supplemental brief within seven (7) days thereafter.

IT IS SO ORDERED.

Signed: December 14, 2023



Martin Reidinger
Chief United States District Judge

